

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of
CONSOLIDATED COMMUNICATIONS
HOLDINGS, INC., CONSOLIDATED
COMMUNICATIONS, INC.,
CONSOLIDATED COMMUNICATIONS
ENTERPRISE SERVICES, INC. (U7261C),
and SUREWEST TELEVIDEO (U6324C) To
Authorize A Corporate Reorganization.

Application 15-10-006
(Filed October 19, 2015)

**DECISION AUTHORIZING CORPORATE REORGANIZATION AND TRANSFER
OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY****Summary**

This decision grants the unopposed application of Consolidated Communications Holdings, Inc. (CCHI), Consolidated Communications, Inc. (CCI), Consolidated Communications Enterprise Services, Inc. (CCES), and SureWest TeleVideo (collectively, “Joint Applicants”) for authorization, pursuant to Public Utilities Code Sections 851 and 854,¹ to: (1) merge SureWest TeleVideo into CCES, both of which are subsidiaries of CCHI and CCI, and (2) transfer SureWest TeleVideo’s authorization to provide services as a limited facilities-based and resale provider of competitive local exchange carrier services to CCES. This proceeding is closed.

1. Factual Background**1.1. Parties to the Transaction**

Consolidated Communications Holdings, Inc. (CCHI) is a corporation organized under the laws of Delaware. CCHI is a publicly traded company (NASDAQ: CNSL) that, through its operating subsidiaries, provides a wide range of telecommunications services to residential and business customers in California, Illinois, Kansas, Texas, and Pennsylvania.

Consolidated Communications, Inc. (CCI) is a corporation organized under the laws of Illinois. CCI is a holding company and a wholly owned direct subsidiary of CCHI. CCI operates through its subsidiaries.

Consolidated Communications Enterprise Services, Inc. (CCES) is a corporation organized under the laws of Delaware. CCES is a wholly owned direct subsidiary of CCI and a wholly owned indirect subsidiary of CCHI. CCES and its subsidiaries provide competitive local exchange carrier (CLEC), non-dominant interexchange carrier (NDIEC), Internet Service Provider, and Voice Over Internet Protocol services. CCES has a certificate of good standing from the California Secretary of State to conduct business in California.² In Decision (D.) 14-08-040, the Commission authorized CCES to provide services in California as an NDIEC.

SureWest TeleVideo is a corporation organized under the laws of California. SureWest TeleVideo is a wholly owned direct subsidiary of CCI and a wholly owned indirect subsidiary of CCHI.³ SureWest TeleVideo is authorized

¹ All Code references are to the Public Utilities Code, unless otherwise stated.

² See Application (A.) 14-06-019.

³ The Commission authorized CCHI and CCI to acquire SureWest TeleVideo in D.12-06-004.

to operate in California as a limited facilities-based and resale provider of CLEC services pursuant to D.02-07-042.⁴ SureWest TeleVideo, doing business as SureWest Broadband, also provides cable television service pursuant to a state video franchise.⁵

1.2. Proposed Transaction

The Joint Applicants propose a corporate reorganization that will merge SureWest TeleVideo into CCES. There will be no change in the ultimate ownership of any of the CCHI subsidiaries as a result of the merger.

The Joint Applicants also request that the Commission transfer SureWest TeleVideo's authorization to provide CLEC services to CCES. The Joint Applicants assert that except for the change in the corporate entity providing the service, there will be no impact on customers as a result of the merger.⁶ CCES will continue to provide CLEC services at the same rates, terms, and conditions under which SureWest TeleVideo provided CLEC services. CCES will retain the same personnel who managed SureWest TeleVideo's CLEC services and will use SureWest TeleVideo's assets in the same manner as SureWest TeleVideo had used them to provide its services.

No protests or responses to the application were filed. The proposed transaction is unopposed.

⁴ D.02-07-042 also authorized SureWest TeleVideo to operate as an NDIEC. CCES acquired SureWest TeleVideo's NDIEC operations and assets effective on January 1, 2015, pursuant to CCES Advice Letter No. 3, filed October 16, 2014.

⁵ Joint Applicants state that they will submit a separate transfer filing for the State Video Franchise certificate. (Application at 7.)

⁶ Application at 9-10.

2. Discussion**2.1. Standard of Review**

Section 851 requires a public utility to obtain Commission authorization prior to the transfer or encumbrance of any “property necessary or useful in the performance of its duties to the public, or any franchise, or permit, or any right thereunder” or prior to the merger or consolidation of its property, franchises, or permits with any other public utility. Section 854(a) requires Commission authorization before a company may “merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state....” The purpose of these sections is to enable the Commission to review a proposed transaction, before it takes place, in order to take such action as the public interest may require.⁷

The primary standard by which the Commission reviews whether a transaction should be approved under these sections is whether the transaction will be adverse to the public interest.⁸ The Commission may also consider if the transactions will serve the public interest. If necessary and appropriate, the Commission may attach conditions to a transaction in order to protect and promote the public interest.⁹

Where, as is the case here, a company that does not possess a Certificate of Public Convenience and Necessity (CPCN) desires to acquire control of a company that does possess a CPCN, the Commission applies the same

⁷ D.05-06-047 at 9; D.01-06-007 at 15.

⁸ D.03-12-033 at 6; D.01-06-007 at 15.

⁹ D.03-12-033 at 6; D.01-06-007 at 15.

requirements as in the case of an applicant seeking a CPCN to exercise the type of authority held by the company being acquired.¹⁰

2.2. Financial Qualifications

To be granted a CPCN for authority to operate as a provider of facilities-based and resold competitive local exchange services, an applicant must demonstrate that it has \$100,000 cash or cash equivalent to meet the firm's start-up expenses. The applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by other telecommunications carriers in order to provide service in California.¹¹

The Joint Applicants have provided a guarantee issued by parent company CCHI that it will make available to CCES the sum of \$100,000 plus any amounts required to cover deposits imposed by other carriers.¹² The guarantee is irrevocable for a period of one year following the Commission's grant of the requested CLEC authority to CCES. The Joint Applicants also provided audited financial statements for CCHI and its subsidiaries demonstrating that CCHI's cash flow is sufficient to cover the amount of the guarantee.¹³ CCHI's guarantee satisfies the financial documentation requirements set forth in D.95-12-056.¹⁴ Therefore, CCES meets the financial requirements to be granted a CPCN to operate as a facilities-based and reseller CLEC.

¹⁰ D.13-11-015 at 3; D.05-06-047 at 9.

¹¹ The financial requirements for certification to operate as a Competitive Local Carrier are set forth in D.95-12-056, Appendix C, Rule 4.B.

¹² Compliance Filing, Exhibit A, filed on February 18, 2016.

¹³ Application, Exhibit D.

¹⁴ See D.95-12-056, Appendix C, Rule 4.B(4)(h).

2.3. Technical Qualifications

To be granted authority to provide local exchange service, an applicant must also make a reasonable showing of technical expertise in telecommunications or a related business.¹⁵

CCHI is a publicly traded company that, through its operating subsidiaries, provides a wide range of telecommunications services to residential and business customers in California and other states. SureWest TeleVideo has been a subsidiary of CCHI and CCI since 2012 and will remain a subsidiary after it is merged into CCES. SureWest TeleVideo has had a CPCN to operate as a limited facilities-based and reseller CLEC since 2002, and the same personnel who managed the services of SureWest TeleVideo will continue to do so with CCES.¹⁶

CCES, which is also a subsidiary of CCHI and CCI, provides a variety of telecommunications services. The Commission has already authorized CCES to provide services in California as an NDIEC in D.14-08-040. The professional biographies of the CCES Management Team provided by the Joint Applicants¹⁷ also confirm that CCES possesses sufficient technical expertise to be granted a CPCN as a CLEC.

In addition, as required by D.13-05-035, the Joint Applicants certify that none of the Joint Applicants nor any of their affiliates, officers, directors, partners, agents or owners (directly or indirectly) of more than 10% of the Joint Applicants, and no one acting in a management capacity for the Joint Applicants

¹⁵ D.95-12-056, Appendix C, Rule 4.B.

¹⁶ Application at 10.

¹⁷ Application, Exhibit G.

has: (a) held one of these positions with a company that filed for bankruptcy; (b) been personally found liable, or held one of these positions with a company that has been found liable for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (c) been convicted of a felony; (d) been (to his/her knowledge) the subject of a criminal referral by a judge or public agency; (e) had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction; (f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement, of criminal or civil claims involving violations of sections 17000 *et seq.*, 17200 *et seq.*, or 17500 *et seq.* of the California Business & Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (g) been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries; or (h) entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general.¹⁸

The Joint Applicants also certify that, to the best of their knowledge, none of the Joint Applicants or any affiliate, officer, director, partner, or owner of more than 10% of any of the Joint Applicants, or any person acting in such a capacity whether or not formally appointed, is being or has been investigated by the Federal Communications Commission or an law enforcement or regulatory agency for failure to comply with any law, rule, or order.¹⁹

¹⁸ Application at 13-14.

¹⁹ Application at 14.

Based on the foregoing, Joint Applicants have demonstrated that CCES has sufficient managerial and technical expertise to operate as a limited facilities-based and resale provider of CLEC services within California.

2.4. Public Interest Considerations

Based on the information in the application, there is no indication that the proposed transaction will be adverse to the public interest. The purpose of the merger of SureWest TeleVideo into CCES is to simplify and streamline CCHI's corporate structure, reduce corporate overhead, and make management of the public utility more efficient. As described above, CCES has the financial and technical qualifications to operate as a facilities-based and reseller CLEC. After the merger, SureWest TeleVideo's customers should continue to receive the same services without interruption under the same rates, terms, and conditions.

3. California Environmental Quality Act (CEQA)

CEQA requires the Commission to assess the potential environmental impact of a project so that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. A project is defined as "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment."²⁰ The CEQA guidelines provide that an activity is not subject to CEQA where "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment."²¹

²⁰ Pub. Res. Code, § 21065.

²¹ Cal. Code of Regs., tit. 14, § 15061(b)(3).

The instant application proposes a corporate reorganization and CPCN transfer that are entirely “paper” transactions. The application does not request authorization for any new construction or changes to existing facilities.

According to the Joint Applicants, after SureWest TeleVideo is merged into CCES, the assets that were used to provide SureWest TeleVideo’s services will be used by CCES in the same manner as they were used by SureWest TeleVideo.²²

Based on the information provided in the application, the proposed transactions will not have a significant effect on the environment. Therefore, pursuant to the CEQA guidelines, the proposed transactions are exempt from review under CEQA.

4. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission’s Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

5. Categorization and Need for Hearings

In Resolution ALJ 176-3366, dated November 5, 2015, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received, and it is not necessary to disturb the preliminary determinations.

6. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Sophia J. Park is the assigned Administrative Law Judge in this proceeding.

²² Application at 10.

Findings of Fact

1. The application seeks authorization for a corporate reorganization merging SureWest TeleVideo into CCES and the transfer of SureWest TeleVideo's CPCN to operate as a limited facilities-based and reseller CLEC to CCES.

2. Both SureWest TeleVideo and CCES are wholly owned subsidiaries of CCHI and CCI.

3. The proposed merger will not result in a change in the ultimate ownership of any of the CCHI subsidiaries.

4. Other than a change in the corporate entity providing the service, there will be no impact to SureWest TeleVideo's customers as a result of the merger.

5. CCES will continue to provide CLEC services at the same rates, terms, and conditions under which SureWest TeleVideo provided CLEC services.

6. CCES will retain the same personnel who managed SureWest TeleVideo's CLEC services.

7. Parent company CCHI guarantees that it will make available to CCES the sum of \$100,000 plus any amounts required to cover deposits imposed by other carriers. The guarantee is irrevocable for a period of one year following the Commission's grant of the requested CLEC authority to CCES.

8. CCES has the requisite managerial and technical expertise in telecommunications to operate as a facilities-based and reseller CLEC.

9. The merger of SureWest TeleVideo into CCES will simplify and streamline CCHI's corporate structure and make management of the public utility more efficient.

10. The application does not propose any new construction or changes to existing facilities, and therefore, approval of the application will not result in a significant effect on the environment.

11. Notice of this application appeared on the Commission Daily Calendar on October 21, 2015.

12. No protests to this application were filed.

13. No hearing is necessary.

Conclusions of Law

1. CCES meets the financial and technical requirements to be granted a CPCN to operate as a facilities-based and reseller CLEC.

2. The proposed corporate reorganization merging SureWest TeleVideo into CCES is not adverse to the public interest and should be authorized pursuant to Public Utilities Code Sections 851 and 854.

3. The proposed corporate reorganization and CPCN transfer are not “projects” subject to review under CEQA because they will not result in a direct or indirect physical change in the environment.

4. In order to provide timely direction to the parties, the decision should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Pursuant to Public Utilities Code Sections 851 and 854, the joint application of Consolidated Communications Holdings, Inc., Consolidated Communications, Inc., Consolidated Communications Enterprise Services, Inc., and SureWest TeleVideo requesting authorization for a corporate reorganization merging SureWest TeleVideo into Consolidated Communications Enterprise Services, Inc. is granted.

2. SureWest TeleVideo's Certificate of Public Convenience and Necessity to operate as a limited facilities-based and reseller of competitive local exchange services is transferred to Consolidated Communications Enterprise Services, Inc.

3. Within five days of the closing of the transaction, Consolidated Communications Enterprise Services, Inc. shall notify the Commission's Communications Division, by letter, of the consummation of the transaction.

4. Consolidated Communications Enterprise Services, Inc. shall comply with all applicable rules for competitive local exchange carriers as set forth in Decision 02-07-042 and Decision 00-03-047, as well as all other applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

5. Application 15-10-006 is closed.

This order is effective today.

Dated _____, at San Francisco, California.